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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Ludwig et al.  
Appl. No.: 09/675,511  
Filed: September 29, 2000  
Title: APPARATUS AND METHOD FOR INACTIVATING VIRAL  
CONTAMINANTS  
Art Unit: 1651  
Examiner: I. Marx  
Docket No.: F-4480 CONT

Commissioner for Patents  
Washington, DC 20231

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RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated October 2, 2002, Applicants respectfully submit as follows:

REMARKS

In the Office Action, Claims 28-30, 32, 34, 38-47, 49 and 51 have been rejected under the judicially-created doctrine of obviousness type double patenting; Claims 28-30, 32, 34, 36 and 38-51 have been rejected under 35 U.S.C. § 112; Claims 40-42, 44, 45 and 49 have been rejected under 35 U.S.C. § 102; and Claims 28-30, 32, 34, 39-47, 49 and 51 have been rejected under 35 U.S.C. § 103. Applicants respectfully submit that the rejections are improper and thus should be withdrawn for the reasons set forth below.

At the outset, Claims 28-30, 32, 34, 39-47, 49 and 51 have been rejected under 35 U.S.C. § 103. More specifically, Claims 40-47, 49 and 51 have been rejected in view of U.S. Patent No. 5,445,629 ("629 Patent") and *Rock or Walvik*; and Claims 28-30, 32, 34, 39-47, 49 and 51 have been rejected in view of U.S. Patent No. 6,207,107 ("107 Patent"). The Patent Office primarily relies on the '629 Patent or the '107 Patent in support of the obviousness rejections.

Contrary to the Patent Office's position, the obviousness rejections are improper as a matter of law and fact. The '629 Patent and '107 Patent each issued after the above-identified patent application was filed. In this regard, the present application claims priority to Serial No. 08/350,398 filed on December 6, 1994. Therefore, the two references can only constitute 102(e) prior art. 35 U.S.C. § 103 provides in pertinent part: